

The Commonwealth of Massachusetts

Department of Revenue

Leverett Saltonstall Building,

100 Cambridge Street, Boston 02204



L. JOYCE HANPERS
COMMISSIONER

October 1, 1981

You request a ruling on behalf of the
("Insurer") as to the Massachusetts income taxation
of tax-sheltered annuities (TSA's).

The Insurer administers TSA's for private, non-profit corporations doing business in Massachusetts. These corporations, which are charitable, educational or scientific organizations described in Section 501(c)(3) of the Internal Revenue Code ("Code"), are exempt from federal taxation under Section 501(a) of the Code.

An employee of such a corporation, electing coverage under a TSA, voluntarily agrees to a reduction in his salary pursuant to a salary reduction agreement and the employer contributes this amount to the TSA. The employer may make an additional contribution to the TSA equal to a percentage of the employee's salary.

Under Code Section 403(b), amounts contributed by a Code Section 501(c)(3) employer to certain annuities are excludable from an employee's gross income to the extent that the aggregate of the employer's contributions does not exceed the exclusion allowance as defined in Section 403(b)(2). U.S. Treas. Reg. 1.403(b)-1(b)(3) characterizes amounts contributed to a TSA by way of a salary reduction agreement as employer contributions.

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Massachusetts gross income is federal gross income with certain modifications (G.L. c. 62, s. 2). General Laws Chapter 62, Section 2(a)(1)(D) provides that contributions to a TSA described in Section 403(b) of the Code, which are made pursuant to a salary reduction agreement and are not required under a retirement program of the employer, are includible in Massachusetts gross income. Section 2(a)(2)(F) of Chapter 62 allows a deduction from federal gross income for amounts received under plans described in Section 403(b) of the Code until the aggregate amount deducted equals the aggregate amount previously included in Massachusetts gross income.

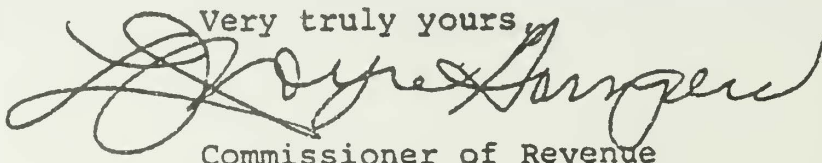
Based on the foregoing it is ruled that:

1. For purposes of General Laws Chapter 62, Section 2(a)(1)(D), both the contributions resulting from the salary reduction and the additional contributions made by the employer are employer contributions if they are made pursuant to a salary reduction agreement and are not required under a retirement program of the employer. These contributions are subject to Massachusetts income tax and should be reported on the employee's Wage and Tax Statement (Form W-2). For example, an employee with an annual salary of \$10,000 agrees, pursuant to a salary reduction agreement, to reduce his salary by \$500 (to \$9,500) and his employer contributes this \$500 and an additional \$500 to a TSA. The employee's Wage and Tax Statement will show income of \$10,500.

2. Payments to an employee from a tax sheltered annuity plan, whether made before or after an employee retires, are deducted from the employee's Massachusetts gross income in the year the payments are received until the aggregate amount deducted equals the aggregate amount previously subjected to Massachusetts income tax; payments to the employee in excess of this amount are taxable to the employee.

You also ask whether contributions to a TSA are considered wages for purposes of the Federal Insurance Contributions Act and the Federal Unemployment Tax Act. These are federal questions on which no opinion is expressed.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Royce Angier", is written over the typed name "Royce Angier". The signature is fluid and cursive.

Commissioner of Revenue

LJH:RSF:mf

LR 81-89